IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.657 of 2005

in

NOTICE OF MOTION NO.925 OF 2003

in

TESTAMENTARY SUIT NO.73 OF 2002

in

TESTAMENTARY PETITION NO. 758 OF 2001

Mrs.Kashmira Vishwanandan Agaskar & ors.. Appellants

versus

Shri Prakash Balajee Nayak & anr .. Respondents

...

Mr. R.V.Govilkar i/b Mr. E.K.Sasidharan for the Appellants.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 28th November 2005.

P.C.:

1. The perusal of the impugned order dated 17th

June 2005 shows that the order came to be passed by consent. This is seriously disputed by the learned counsel for the appellant. The only course available to the appellant in that event is to apply for review of the order dated 17th June 2005.

2. We are informed that the appellants did take out a praecipe by way of speaking to the minutes. Such praecipe cannot be a substitute to the review petition under law. If in an order of the Court, something is recorded which does not reflect the correct position of the proceedings, the course available to the aggrieved party is to apply for review of the order.

3. We, accordingly, decline to entertain the appeal at this stage. Liberty to the appellants to apply for review of the impugned order dated 17th June 2005 and then prosecute further remedy in accordance with law.

(R.M. LODHA, J)

(D.G. KARNIK, J)